

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In re Application of)	94-11
)	
TELEPHONE AND DATA)	File No.
SYSTEMS, INC.)	10209-CL-P-715-B-88
)	
For Authority to Construct and)	
Operate a Domestic Cellular)	
Radio Telecommunications)	
System on Frequency Block B)	
to serve the Wisconsin 8 -)	
Vernon Rural Service Area;)	
Market No. 715)	

To: The Commission, en banc

REPLY TO OPPOSITION

Century Cellunet, Inc. (Century), Contel Cellular, Inc. (Contel), Coon Valley Farmers Telephone Company, Inc. (CVF), Farmers Telephone Company (FTC), Hillsboro Telephone Company (HTC), LaValle Telephone Cooperative (LTC), Monroe County Telephone Company (MCTC), Mount Horeb Telephone Company (MHTC), North-West Cellular, Inc. (NWC), Richland-Grant Telephone Cooperative, Inc. (RGTC), Vernon Telephone Cooperative (Vernon) and Viroqua Telephone Company (Viroqua) (hereinafter sometimes referred to collectively as the "Settling Partners"), by their attorney, respectfully reply to the Opposition to Supplement to Application for Review filed by Telephone and Data Systems, Inc. (TDS) in the captioned proceeding on September 2, 1992. As discussed below, TDS' opposition is meritless and should be rejected.

The Settling Partners' Supplement to Application for Review filed on August 18, 1992 directly raised in this proceeding the Commission's findings and conclusions in its recent La Star decision in File No. 27161-CL-P-83, et al., FCC 92-243, adopted June 5, 1992 and released June 15, 1992, 7 FCC Rcd 3762 (FCC 1992). In the La Star case, notwithstanding that the ALJ had declined to add a misrepresentation issue during the hearing proceeding itself, the Commission nonetheless specifically stated:

Because our conclusion ... results in the dismissal of La Star's application, we do not reach the question ... of whether La Star's principals lacked candor in their hearing testimony concerning the control of La Star Questions regarding the conduct of SJI and [TDS] in this case may be revisited in light of the relevant findings and conclusions here in future proceedings where the other interests of these parties have decisional significance.

FCC 92-243 at ¶3 & n. 3. (Emphasis added).

In its Supplement, the Settling Partners pointed out that the instant proceeding is one in which "the other interests of [TDS] have decisional significance". The Settling Partners further argued that under applicable rules and precedents, the least that should happen to TDS as a result of La Star is that grant of its application herein should be set aside and the application should be dismissed, wholly independent of the other issues previously raised in the case.

TDS' position in its Opposition boils down to the following passage (at pp. 6-7) from its pleading:

The most expansive interpretation that can reasonably be placed on the quoted footnote is that if the Commission's findings and conclusions are accepted, [TDS] was more active as a minority joint venturer, and SJI was less active as a majority joint venturer, than either should have been, and that this may be considered in a proceeding where [TDS'] position as a minority owner a) is comparable to what it was in La Star and b) is relevant. (Emphasis added).

TDS nonetheless denies **any** significance, concluding in the next breath that: "Here there are no factual issues concerning [TDS'] relationship to UTELCO, a matter which in any event has nothing to do with the issue before the Commission here."

TDS' contention does not require an extended response. Even accepting its characterization of the significance of Footnote 3 in the La Star case arguendo, TDS' attempt to avoid the force of that Footnote in this case is a total non-sequitur. In point of fact, TDS' position as a minority owner of UTELCO is indeed "comparable to what it was in La Star". Moreover, TDS' "relationship to UTELCO" is not only "relevant", contrary to its attempt to blink reality, but in fact, as pointed out in the Supplement to Application for Review (at p. 4), "TDS' similar ownership of 49% of UTELCO goes to the very core of the issues in this case." (Emphasis added). Therefore, even under TDS' own self-serving interpretation of Footnote 3, further action in this case is

indeed warranted in light of the Commission's La Star decision.

In any event, all of TDS' protestations simply ignore the fact that the Commission in Footnote 3 specifically used the phrase "**may be revisited**" in connection with TDS' conduct. In using that term, the Commission stated, in substance, that the issue of TDS' conduct remains very much alive despite the fact that the ALJ had not designated a specific issue concerning it. The only plausible inference, under the circumstances, is that the Commission has gone out of its way to make plain that the issue is now ripe for consideration in other proceedings, such as this case, where TDS' "other interests ... have decisional significance". The Commission now should do just that.

Respectfully submitted,

CENTURY CELLUNET, INC.
CONTEL CELLULAR, INC.
COON VALLEY FARMERS TELEPHONE
COMPANY, INC.
FARMERS TELEPHONE COMPANY
HILLSBORO TELEPHONE COMPANY
LAVALLE TELEPHONE COOPERATIVE
MONROE COUNTY TELEPHONE COMPANY
MOUNT HOREB TELEPHONE COMPANY
NORTH-WEST CELLULAR, INC.
RICHLAND-GRANT TELEPHONE
COOPERATIVE, INC.
VERNON TELEPHONE COOPERATIVE
and
VIROQUA TELEPHONE COMPANY

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September 15, 1992

CERTIFICATE OF SERVICE

I hereby certify that I have this 15th day of September, 1992, served the foregoing Reply to Opposition upon Telephone and Data Systems, Inc. by mailing a true copy thereof, first class postage prepaid, to its attorney, Alan Y. Naftalin, Esquire, Koteen & Naftalin, 1150 Connecticut Avenue, N.W., Suite 1000, Washington, D.C. 20036.


Kenneth E. Hardman